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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/064,073	06/07/2002	Theodorus Lambertus Hoeks	08CS5682-1	3895
23413	7590	06/07/2007		
CANTOR COLBURN, LLP 55 GRIFFIN ROAD SOUTH BLOOMFIELD, CT 06002			EXAMINER WOODWARD, ANA LUCRECIA	
			ART UNIT 1711	PAPER NUMBER
			MAIL DATE 06/07/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/064,073

Applicant(s)

HOEKS ET AL.

Examiner

Ana L. Woodward

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE three MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on March 26, 2007
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 and 23-26 is/are pending in the application.
- 4a) Of the above claim(s) 4, 6, 14 and 15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5, 7-13, 16-20 and 23-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election of potassium diphenylsulfon-3-sulfonate in the reply filed on April 25, 2006 is acknowledged.
2. Claims 4, 6, 14 and 15 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on April 25, 2006.

### ***Claim Rejections - 35 USC § 112***

3. Claims 1-3, 5, 7-13, 16-20 and 23-26 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification, as originally filed, fails to provide express support for the new terminology "incompatible" governing the organic flame retardant. Accordingly, since no express support can be found for said term, such is deemed New Matter.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:  
(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
4. Claims 23-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. 4,289,685 (Druschke et al) as per reasons of record.

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The presently claimed products are deemed unpatentable because the prior art discloses products which reasonably appear to be either identical with or only slightly different from the claimed product. Patentability considerations of the above-rejected product-by-process claims are guided by the principles applicable to this claim format. It is well settled that the evaluation of such claims is based on the product rather than on the process steps, i.e., while the claims may recite process limitations, it is the patentability of the product which must be established. Thus, the burden is shifted to applicants to provide objective evidence that the claimed products are not the same as or obvious from those of the prior art.

As to the applicants' requirement for reduction of surface inclusions (claim 26), this language, in effect, simply states the result of compounding the materials. While the reference may not expressly disclose said effect, it does recognize that superior optical properties are achieved by the addition of the flame retardant salts in solution form, as opposed to solid form. Accordingly, it is maintained that a reduction of surface inclusions would flow naturally from following the suggestion of the prior art. Its discovery by applicants is tantamount only to finding a property of an old composition and thus cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

5. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. 4,113,695 (Mark) as per reasons of record.

As to the applicants' requirement for reduction of surface inclusions, this language, in effect, simply states the result of compounding the materials. While the reference may not expressly disclose said effect, it does recognize that superior optical properties are achieved by

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the addition of the flame retardant salts in solution form, as opposed to solid form. Accordingly, it is maintained that a reduction of surface inclusions would flow naturally from following the suggestion of the prior art. Its discovery by applicants is tantamount only to finding a property of an old composition and thus cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

Mark's compounding would appear to necessarily involve the application of shear, given that extruders and similar mixing devices are used to achieve the non-opaque compositions. It is noted that the same or similar devices are employed in the compounding of applicants' materials (page 10 and examples).

6. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. 4,600,742 (Higgins).

In essence, the disclosure of the reference differs from the above-rejected claims in not expressly exemplifying the production of a sheet. It would have been obvious to one having ordinary skill in the art to have produced a fire resistant film or sheet by extrusion of patentees' composition with the reasonable expectation of success. The fact that applicant has recognized another advantage, i.e., reduction of surface inclusions, which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

Given that the use of extruders apply shear to applicants' components during compounding (page 10 specification), it would be expected that the use of the same or similar devices would similarly provide shear during the compounding step in the reference.

***Response to Argument***

9. Applicant's amendments filed March 26, 2007 have effectively overcome the previous rejections.

***Conclusion***

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

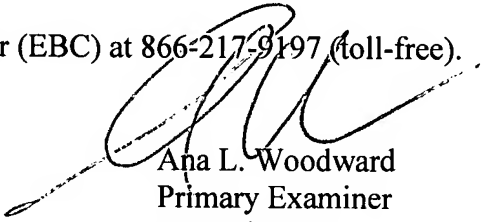
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ana L. Woodward whose telephone number is (571) 272-1082. The examiner can normally be reached on Monday-Friday (8:30-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James J. Seidleck can be reached on (571) 272-1078. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Ana L. Woodward  
Primary Examiner  
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